IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 14680of 2004

DATE OF DECISION: 16.11.2004

Joginder Singh Ahlawat

..... PETITIONER

VERSUS

State of Haryana and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. D.S.Bali,Sr.Advocate with
Mr.Salil Bali, Advocate for the petitioner.
Mr.Harish Rathee,Sr.DAG, Haryana for the State.
Mr. Rameshwar Malik,Advocate for respondent No.3

M.M.S.BEDI,J.

The petitioner while posted as Assistant Soil Conservation Officer (kandi) Yamuna Nagar was caught in a trap case FIR No. 26 dated 25.6.2003 registered at Police Station, Vigilance Bureau,Ambala under Section /13 of the Prevention of Corruption Act,1988 (for short 'the Act). The petitioner, by way of this petition under Article 226 of the Constitution has sought quashing of sanction order dated 30.8.2004 (Annexure P-7) passed by respondent No.1 under Section 19 of the Act for his prosecution in the above said F.I.R. on the ground that in view of the earlier order dated 10.11.2003 (Annexure P-6) refusing to grant the sanction, the impugned

order dated 30.8.2004 (Annexure P-7) is not sustainable.

Brief facts, relevant for the decision of this case are that on 25.6.2003, on the complaint of one Satyavir Singh Tomar , who was posted as Agriculture Development Officer in the office of the petitioner, the petitioner was caught by the Vigilance Bureau while accepting a sum of Rs.10,000/- as illegal gratification from him as commission for getting the site approved for carrying out the work in Kotla circle. Pursuant to the registration of the F.I.R., a trap was laid and the incident was witnessed by Sunil Kaushik, Agriculture Development Officer, Kandi to which effect he had sworn an affidavit narrating the incident as to how the petitioner had been implicated by Satyavir Singh, respondent No.3. The petitioner was released on bail by the learned Additional Sessions Judge, Yamuna Nagar vide order dated 15.7.2003. Respondent No.1 vide order dated 4.8.2003 placed the petitioner under suspension with effect from 25.6.2003 to 15.7.2003 under rule 4A(2) of C.S.R. Volume-I for the period he remained in custody.

Complainant-respondent No.3 filed CWP No. 11421 of 2003 praying that the petitioner should be placed under suspension and he be transferred from Yamuna Nagar to advance and facilitate investigation of the case, impleading the petitioner as respondent No.3. On 20.10.2003 departmental proceedings regarding the incident dated 25.6.2003 were initiated and Shri Lal Singh, IAS, Joint Secretary, Agriculture was appointed as an Inquiry Officer, who after conducting the inquiry and taking into account all the circumstances came to a conclusion that the allegations against the petitioner were false and could not be proved. The order of the

Inquiry Officer is dated 20.10.2003 (Annexure P-5). Respondent No.1 vide order dated 10.11.2003 (Annexure P-6) refused to grant sanction for prosecution of the petitioner under Section 7/13 of the Act. Thereafter vide subsequent order dated 30.8.2004 (Annexure P-7) respondent No.1 i.e. the Financial Commissioner and Principal Secretary to Government Haryana, Agriculture Department reviewed his earlier order dated 10.11.2003 (Annexure P-6) and passed the impugned order dated 30.8.2004 (Annexure P-7) granting sanction for prosecution of the petitioner. The validity of order dated 30.8.2004 (Annexure P-7) has been challenged.

In the written statement filed on behalf of respondents 1 and 2, it has been admitted that before declining the grant of sanction to prosecute the petitioner, an inquiry was got conducted through the Joint Secretary to Government Haryana and after examining the report, a decision was taken not to accord sanction to prosecute the petitioner on the ground that the petitioner was not held guilty in the inquiry report. It is averred in the written statement that after declining the sanction to prosecute the petitioner, complainant Satyavir Singh Tomar (respondent No.3) filed CWP No. 11421 of 2003 in this Court, which was fixed for hearing on 23.7.2003 and the Division Bench passed the following orders:-

> "After some arguments, Shri Randhir Singh, learned senior Deputy Advocate General, Haryana representing respondents No. 1 and 2, prays to adjourn this case so that he could have further instructions in the mater as to how respondent No.3 is accepted by the Government to be innocent, if so, then whether the role of the Vigilance Bureau officials and other authorities

can be described as innocent.

Adjourned to September 2,2004."

On the above said orders of this Court, it was observed that there were two different versions, one of the Vigilance Department and the other of the Agriculture Department which come in conflict with each other. The matter was reconsidered and after carefully examining the record i.e. statements, challan papers, police file and other documents, it was decided to give sanction for prosecution of the petitioner in the Court of law. Accordingly, necessary sanction to prosecute the petitioner was accorded by the respondent-department vide order dated 30.8.2004.

Respondent No.3 in his separate written statement claimed that the sanction order dated 30.8.2004 (Annexure P-8) is based on fresh material.

Learned counsel for the petitioner has vehemently urged that the order dated 10.11.2003 (P-6) refusing to grant sanction for prosecution is based on the material produced before the sanctioning authority. He has submitted that it was not permissible for respondents 1 and 2 to review that order by granting sanction for prosecution on the basis of the same material. It was urged that there was absolutely no fresh material before the sanctioning authority to review the earlier order.

Learned counsel for respondents 1 and 2 as well as counsel for respondent No.3 have argued that Shri Mahabir Parsad, HCS, General Manager, Haryana Roadways, Karnal, the then City Magistrate, Yamuna Nagar had submitted an affidavit that he was joined as a member of the raiding party by the Investigation Officer by apprising him about the facts of

the raid in his office and he had witnessed the entire episode of receipt of illegal gratification, the recovery of the currency notes and the recovery of hand wash solution etc. during the raid. A copy of the affidavit dated 6.7.2004 of Mahabir Parsad has been attached by respondent No.3 with his written statement as Annexure R-/1. It was contended that the affidavit of Shri Mahabir Parsad constituted the fresh material for changing of the opinion of the sanctioning authority.

We have summoned the original record pertaining to the sanction deeming it necessary for the just decision of the case. A perusal of the original file indicates that vide letter No.3402/SVB/A dated 27.8.2003 sent by Deputy Inspector General of Police, State Vigilance Bureau,Ambala Range, Ambala City, a request had been made for the grant of sanction for prosecution. The relevant portion of the letter reads as follows:-

> " The Deputy Inspector General of Police
> State Vigilance Bureau
> Ambala Range,Ambala City
>
> To
>
> The Financial Commissioner & Secretary to Govt. Hy
> Agriculture Department, Sector 17,
> Chandigarh.
>
> No. 302/SVB/A dated A/City the 27/8/2003
>
> Subject: case FIR No.26 dated 25.6.2003 u/s 7-13 P.C. Act 1988 PS, SVB, Ambala against Joginder Singh A.S.C.O. Kandi (Yamunanagar) Reg. Sanction for prosecution.
>
> Memorandum
>
> The investigation of case FIR No.26 dated 25.6.2003 u/s 7-13 P.C.Act 1988 PS, SVB Ambala has been completed in all respect. Challan is to be presented in the concerned court for judicial verdict, which is pending for want of prosecution sanction.

You are,therefore, requested to accord sanction for prosecution against Joginder Singh A.S.C.O. Kandi (Yamunanagar) as the court cannot take cognizance without prosecution sanction. The challan, judicial file as well as police file and other documents are being sent herewith for your kind perusal which may please be returned to this office along with prosecution sanction.

Encl
1) Judicial file pages 1 to 121
2) Police file pages 1 to 133

Dy.Inspector General of Police
State Vigilance Bureau,
Ambala Range, Ambala City"

The said file was received in the office of Financial Commission and Secretary to Government Haryana, Agriculture Department, Sector 17,Chandigarh on 2.9.2003. It is evident from the official marginal notings on the above said letter that the entire police file along with all the documents with judicial file were put up for consideration of the sanctioning authority. Vide reminder No.456 dated 24.9.2003 the Vigilance Bureau had again requested the Financial Commissioner and Principal Secretary, Agriculture Department for grant of sanction so that the challan could be presented in the Court. Vide order dated 10.11.2003 (Annexure P-6) the Financial Commissioner and Chief Secretary to Haryana Government, Agriculture Department had refused to grant the sanction for prosecution of the petitioner. A copy of the order dated 10.11.2003 is attached with the petition as Annexure P-6. The aforesaid order is a well reasoned order concluding that no sanction for prosecution could be accorded. The sanctioning authority had formed an opinion on the basis of the report dated 20.10.2003 (Annexure P-5) prepared by Shri Lal Singh, I.A.S. Joint Secretary Agriculture. The sanction

had been refused inter alia for the following reasons:- (i) as is apparent from Annexure P-6 that the petitioner has been falsely implicated by Shri Satyavir Singh Tomar, A.D.O. in the Vigilance case; (ii) one of the staff member Shri Sunil Kumar Kaushik, A.D.O. was present at the residence of the petitioner and as per Shri Sunil Kumar Kaushik the petitioner was to leave for Panchkula inspection when Satyavir Singh Tomar, A.D.O. (Kandi) Kotla told him that Rs.10,000/- had to be given to Shri D.K.Verma, S.S.S. (Kandi) Panchkula and he gave this amount to the petitioner;(iii) that Satyavir Singh, complainant is a clever and corrupt man and a case for recovery of embezzlement of an amount of Rs.56,635/- is pending against him; he has committed the act of cheating by making a cutting in the register; (iv) that the antecedents of the complainant-respondent No.3 have been taken into consideration for exonerating the petitioner by the Inquiry Officer Shri Lal Singh; (v) that the complainant while working in the office of Assistant Agriculture Director, Karnal had created nuisance in drunkard condition on 2.9.1981; (vi) that he had been sentenced to life imprisonment under section 302 I.P.C. in 1972 by a criminal Courts, however, he was acquitted by the High Court in an appeal; (vii) that at the time of his appointment in the department, the sentence of life imprisonment was still existing against him; (viii) that the report of District Magistrate, Meerut vide letter dated 16.12.1977 reflected that the complainant had been sentenced for life under Section 302 I.P.C. vide order dated 18.7.1974; (ix) that the character of the complainant was of doubtful nature, the information was sent regarding the character of respondent No.3 to Assistant Director through letter dated 20.11.1977 but the same had not

been received by the department; the complainant used to pressurise politically in the matter of his postings; (x) the complainant had damaged the Sarvo stabilizer in the office of Assistant Agriculture Director, Karnal regarding which recovery was to be made from him; (xi) that the complainant used to blackmail the senior officers, which was established from letter dated 30.7.1981 of Assistant Agriculture Director office; (xii) that the complainant had not been able to maintain standard with regard to his character and his working behaviour is not disciplined; the complainant is an expert in the filing of court cases and he had registered a few cases against a bank;(xiii) that the allegations against the petitioner that he had discriminated while assigning the work with regard to the budget of complainant Satyavir Singh is not established from letter dated 25.5.2003; (xiv) that the complainant Satyavir Singh Tomar had not joined the inquiry proceedings and he had given in writing on 29.9.2003 stating that any kind of inquiry is not legal and is contempt of Court, as such he did not participate in the inquiry; (xv) that from the details received from the A.S.C.O. Yamuna Nagar, statement made by the petitioner, the statement made by eye witness Sunil Kumar Kaushik, details given by Babu Ram, Agriculture supervisor and the statement of Shri D.K.Verma, S.S.S., the matter appears to be doubtful from the beginning. After considering all the above said circumstances, respondent No.1 vide order dated 10.11.2003 (Annexure P-5) refused to grant sanction for prosecution of the petitioner.

We have carefully perused the subsequent order dated 30.8.2004 (Annexure P-7) granting sanction for prosecution . A perusal of the order Annexure P-7 indicates that the material, which was examined

before passing impugned order consisting of the statements under Section 161 Cr.P.C., report under Section 173 Cr.P.C., challan papers, police file and other documents forwarded by the Deputy Inspector General of Police, State Vigilance Bureau, Ambala Range and on the basis of the above said material, the sanction under Section 19 of the Act was granted. After going through the letter dated 27.8.2003 sent by Deputy Inspector General of Police, State Vigilance Bureau, Ambala referred to above and the entire record, we are of the considered view that the entire judicial file consisting of 1 to 121 pages and the police file consisting of 1 to 131 pages were made available to the Financial Commissioner and Secretary to Government Haryana, Agriculture Department. The said judicial file and police file undoubtedly included the report under Section 173 Cr.P.C., the challan papers, statements of the witnesses under Section 161 Cr.P.C., recovery memos and the other documents produced by the State Vigilance Bureau. The enclosures which were sent by the Vigilance Department have been mentioned in letter dated 27.8.2003. So far as the statement of independent official witness Shri Mahabir Parsad is concerned, that also necessarily is a part of the report of police prepared under Section 173 Cr.P.C. Respondent No.3 has tried to put forth the plea that "the affidavit of Mahabir Parsad" constituted the additional material for reviewing the earlier order dated 10.11.2003 (Annexure P-6). Once the statement of a witness under Section 161 Cr.P.C. is a part of the police file, the affidavit of the same witness cannot be considered to be the additional material for the purpose of forming a fresh opinion. Moreover, it is not the case of respondents 1 and 2 that the affidavit of Mahabir Parsad was the additional material which

persuaded the sanctioning authority to change the opinion regarding the sanction.

In view of above circumstances, the question, which has arisen for determination before this Court is not as to whether the sanction should have been granted to prosecute the petitioner but the only question of law which has been taken up for consideration by this Court is as to whether the grant of sanction for prosecution vide order dated 30.8.2004 (Annexure P-7) could be accorded after the same authority had earlier, on the same material before it, had declined to grant sanction.

In **Surjit Singh vs State of Punjab and others (1980)1 I.L.R. 11**, the question regarding the scope of review of its earlier order by the State Government and grant of sanction subsequently under Section 197 Cr.P.C. came up for consideration before the Division Bench of this Court when it was held that once the Government has exercised the power to refuse sanction, it ceases to have any power or authority to pass a fresh order. It was observed in the said judgment that the order passed under Section 197 Cr.P.C. is an administrative order and not a quasi-judicial order,therefore, no one is entitled to any hearing before passing a such order. The relevant portion of the said judgment is as follows:-

> " Held, that the Government acts in administrative capacity while passing an order under Section 197 of the Code of Criminal Procedure,1973 and the Government exercises a statutory power and that power can be exercised by it only once in whatever way it chooses to do but later on it cannot change its mind and pass a fresh order taking a different view,

> otherwise there will no end to the exercise of this power. There is no specific provision empowering the State Government to pass a second order on the same facts either expressly or by necessary implication. There may be a difference in passing an administrative order in exercise of its statutory authority under a specific statute in contradistinction to its purely administrative or executive authority under Article 162 of the Constitution. Therefore, the general power of the Government to rescind or vary its order has to be kept at a different level than the orders which the government has the authority to pass on the basis of a statute framed by Parliament or the State Legislature. If the Government has exercised its power once, it cannot exercise the same power in a given case for the second time but if the Government has not exercised its power, it has not exhausted its power and there is no bar in the exercise of that power. Therefore, once having exercised its power the Government has no power or authority to pass a fresh order on the matter under Section 197 of the Code."

A similar question cropped up in **Dr.Jaswinder Kaur vs Sate of Punjab and another 2001(2) R.C.R.(criminal) 58** regarding the scope of review of the order of the Government under Section 19 of the Prevention of Corruption Act subsequently after having refused to grant the sanction for prosecution. It was held that the Government cannot review its order regarding grant of sanction.

In **Harmesh Kumar vs State of Punjab, 1999(2) RCR**

(Criminal) 351, in context to the provisions of Section 19 of the Act it has been held as follows:

> " After considering the rival contentions of the parties, I am of the considered opinion that no prosecution can be launched against the petitioner as the investigating agency has not procured the valid sanction from the competent authority and that order Annexure P-16 which has been passed by respondent No.3 does not give him the power to grant valid sanction under Section 19 of the Prevention of Corruption Act. Section 19 of the Act has been incorporated in the Act with a laudable purpose to safeguard the interest of public servants so that these persons may not be harassed unnecessarily by unscrupulous litigants. The object of Section 19 is to secure the interest of a public servant from vexatious and frivolous litigation so that the sword of tension may not hang on his neck for years together. That is the reason the legislature in its wisdom has categorised the public servants into three categories and has ultimately vested these powers to the Central Government, State Government or to the authority competent to remove a public servant from his office. The scheme of the Act as I understand is that after investigating the matter, the investigating agency has to place he entire evidence which has been collected during the course of investigation including the documents and the statements of the witnesses before the competent authority which is supposed to apply its mind in a

quasi-judicious manner so as to arrive at an independent conclusion as to whether a public servant has prima facie committed the offence or not. Of course, they duty upon the competent authority is onerous as it is to formulate an opinion in an unbiased mind. But once it formulates an opinion acting in a quasi-judicious manner, then the investigating agency cannot set at naught the decision so taken by the competent authority. Even with the refusal of granting sanction by a competent authority, the successor authority cannot review the order once that power has been exercised/ discharged by a competent authority at one point of time..."

Similar question has been considered by the Division Bench of Himachal Pradesh High Court in **Omkar Sharma and etc. vs State of H.P. And others 2003(2) R.C.R. (criminal) 512** wherein following the judgment of **Surjit Singh's case (supra),** it has been held as under:

" What follows from the aforesaid discussion that appropriate authority who on consideration of all the material had refused to accord sanction to prosecute a public servant, has no power on re-consideration to review such an order and thereby according sanction to prosecute on the same material, It will be a totally different situation if any additional/fresh/new material is brought before the competent authority; that admittedly is not the situation in all the three cases nor is the case of any one of the respondents set out in their replies. Similarly, the long gap

> after completion of investigation and the grant of sanction is an additional ground to grant relied to the petitioners in all these three cases."

Similar is the ratio of **Mohammed Iqbal Bhatti vs State of Punjab 2006(2) RCVR (Criminal) 430**, wherein it was held that once the sanction has been refused under Section 19 of the Prevention of Corruption Act after considering the material on record, the authority cannot review its order on the same material. The relevant portion of the judgment is as follows:-

> " The government cannot act in a manner which may cause harassment to an employee or any person. Though the orders required to be passed while exercising the powers under Section 19 of the Act and Section 197 of the Code of Criminal Procedure cannot be termed as quasi judicial order, yet the orders have to be passed consciously and cautiously by applying the mind accordingly. In the present case, the impugned order has been passed in a very casual manner whereas the previous order had been passed after due deliberations and when the Vigilance Bureau was unable to give answers to the queries raised, the sanction had been declined."

On the basis of the law laid down in the above judgments and after going through the original file regarding sanction, we are of the considered view that order dated 30.8.2004 (Annexure P-7) has been passed casually without application of mind. Order dated 30.8.2004

(Annexure P-7) and official record do not indicate that "any fresh material" not earlier known to the sanctioning authority, had come to its knowledge before it along with letter dated 27.8.2003 requesting for the grant of sanction for prosecution of the petitioner.

In view of the above discussion, the writ petition is allowed and order dated 30.8.2004(Annexure P-7) is set aside. Original file is directed to be returned to the State counsel.

(M.M.S.BEDI)
JUDGE

November 16 ,2006 (M.M.KUMAR)
TSM JUDGE